COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

(1) Appeal from Order No. 126 of 2003

Om Prakash … **Appellant.**

Versus

Regional Manager,
U.P.S.R.T.C. Dehradun … **Respondent.**

And

(2) Appeal from Order No. 149 of 2003

U.P.S.R.T.C. through
Its Regional Manager. … **Appellant.**

Versus

Om Prakash … **Respondent.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Both these appeals arise out of the same impugned judgment and award and are between the same parties, therefore, they are being disposed of by this common judgment.

In A.O. No. 126 of 2003, the claimant-appellant has come up in appeal with a prayer to enhance the quantum of award, under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and award dated 25.3.2003, passed by the Motor Accident Claims Tribunal/IV F.T.C. (Additional District Judge) Hardwar ***(in short the Tribunal),*** whereby the learned Tribunal has awarded amount of Rs. 5,96,000/- along with interest @ 9% per annum in favour of the claimant appellant against the O.P.-respondent, as ordered in the impugned order.

In A.O. No. 149 of 2003, the appellant-U.P.S.R.T.C. has come up in appeal with a prayer to set aside the judgment and award under appeal and has challenged the findings of the Tribunal on the ground the accident in question was mechanical failure of the bus and there was no negligence on the part of the driver of the bus in question, therefore, the liability fastened on the appellant is against the evidence on record and the quantum of award is arbitrary and perverse.

Brief facts of the case are that a motor accident took place on 14.3.1998 at 1.00 p.m. near Jwalapur involving U.P.S.R.T.C. bus No. U.P.07-2203 due to rash and negligent driving by its driver with the result the injured claimant sustained grievous injuries and as a result thereof, he has become permanent disabled. The claimant-injured, who was accountant in the Social Welfare Department Hardwar, was going on the fateful day from Roorkee to Hardwar by the said bus. When the bus reached near Jwalapur, the driver lost control over the bus and went off the road and dashed against a tree, with the result many persons including the claimant sustained injuries and were brought to District Hospital Hardwar. Claimant was referred to Meerut for treatment, who could not recover despite treatment and incurring heavy expenditure and has become permanent disabled and incapacitated to do government work. The claimant was aged 45 years and was getting Rs. 5,537/- per month as salary. Hence, claim petition under Section 166 of the Act has been preferred for a sum of Rs. 20,45420/-.

The Opposite-Party U.P.S.R.T.C. contested the claim petition and filed its written statement. It has been asserted that the accident was result of mechanical failure in the bus and the accident has not occurred due to rash and negligence on the part of the driver of the vehicle. The amount of compensation has also been challenged.

On the pleadings of the parties, the learned Tribunal framed necessary issues in the case. After considering the material on record, the Tribunal has come to the conclusion that the accident in question has arisen out of the use of motor vehicle, but it was result of mechanical failure of the brakes. The learned Tribunal after considering the oral and documentary evidence, on record, found that the injured-claimant Om Prakash has become permanent disabled. The Tribunal also found that the injured had incurred expenses on his medical treatment worth Rs. 2,00,780/- and is now incapacitated to do his official work. The injured was undisputed aged 43 years. The disability was taken to be 50% for purposes of determining the amount of compensation. Thus, the Tribunal was of the view in case of 100% disability, he would have been entitled to compensation worth Rs. 7,92,000/-, therefore, the injured was entitled to get Rs. 3,96,000/- as compensation on account of his 50% permanent disability. ***It may be noted here that due to arithmetical mistake, this amount has been worked out as Rs.3,71,000/- instead of the aforesaid amount.*** In addition to it, the Tribunal has awarded Rs. 2,10,000/- towards medical expenses, sum of Rs. 5,000/- towards pain and suffering, Rs. 5000/- towards expenses on special diet and Rs. 5000/- towards conveyance charges, thus, total compensation of Rs. 5,96,000/- along with interest @ 9% per annum has been awarded in favour of the injured Om Prakash. Aggrieved by the impugned Judgment and award, both the injured-claimant the Opposite Party U.P.S.R.T.C. have come up in appeal as mentioned earlier.

We have heard learned counsel for the injured-claimant Sri Vivek Shukla as well as learned counsel for the U.P.S.R.T.C. Sri Ashish Joshi and have carefully examined the entire material before us including the impugned and award.

It has been submitted on behalf of the appellant in A.O. No. 126 of 2003, that the amount of compensation, i.e. Rs.

5,96,000/- along with interest @ 9% per annum is not adequate and just compensation and prayer to enhance the amount of compensation has been made. We have considered the case from all the four corners and we find that the learned Tribunal has awarded just the proper compensation in the present case. The Tribunal has considered the income and age of the deceased coupled with the permanent disability. Besides, the Tribunal has awarded additional amounts on different heads. In our opinion, no prejudice has been caused to the injured Om Prakash. Having considered all the aspects of the case, the amount of Rs. 5,96,000/- as compensation ought to have been worked out as Rs. 6,21,000/-. We have noticed above that the Tribunal due to clerical error worked out half of amount of Rs. 7,92,000/- as Rs. 3,71,000/-, thereby, amount of Rs. 25,000/- less has been calculated, which is liable to be corrected now. Accordingly, the total amount of compensation now comes Rs. 6,21,000/-. The Tribunal has also awarded interest at the rate of 9% per annum of the compensation amount. In the circumstances of the case, we are of the view that it is just and proper compensation in the present case. We find no reason to interfere with the findings of the learned Tribunal on merits. The findings of the Tribunal deserves to be modified to the above extent alone. Nothing has been shown to us to convince that this amount of award is not based on evidence on record. The appeal preferred by injured Om Prakash for enhancement of quantum of award is devoid of merit.

In A.O. No. 149 of 2003, it has been argued on behalf of the appellant U.P.S.R.T.C. that the Tribunal has held that the accident in question was result of mechanical failure of the brakes of the bus involved in the accident, therefore, the appellant is not liable to pay compensation. We have considered the submissions; but we are not inclined to hold otherwise. The provisions of Section 165 of the Act are clear on the point. It is admitted case that in the present case, the injured claimant Om Prakash sustained grievous injuries in the motor accident arising out of the use of

motor vehicle. The learned counsel for the appellant U.P.S.R.T.C. could not show any provision of law, so as to lead us to an inference that the appellant is not liable to pay compensation in the present case. It is not the case of the appellant U.P.S.R.T.C. (owner of the vehicle) that, in the present case, the injuries sustained by the injured Om Prakash was not the result of the use of motor vehicle. It has also not been established on record that just before the accident, the U.P.S.R.T.C. had ascertained that the vehicle in question was actually in prefect order with no mechanical disorder. In any view of the matter, the argument on behalf of the appellant is not at all tenable. We have no option but to uphold the findings recorded by the learned Tribunal.

In the result, both the appeal (A.O. No. 126 of 2003 and A.O. No. 149 of 2003) are devoid of merit and must fail. However, the impugned award stand modified to the extent that the total compensation, arrived at by the Tribunal, shall be read as Rs. **6,21,000/-** instead of Rs. **5,96,000**/-. With this modification, the findings of the learned Tribunal deserve to be upheld.

Both the appeals are dismissed on merit. The judgment and award appealed against is upheld with the modification as aforesaid. No order as to costs.

The amount in deposit with this Court shall be transmitted to the Motor Accident Claims Tribunal concerned. The injured-claimant shall be at liberty to withdraw the amount, if any.

24-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP